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20 *Counsel for Defendant Google LLC*

21 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

22 CHASOM BROWN, *et al.*, individually and
on behalf of themselves and all others
similarly situated,

23 Case No. 4:20-cv-03664-YGR-SVK

24 Plaintiffs,

25 vs.
26 **GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
JOINT SUBMISSION RE:
PRESERVATION IN LIGHT OF CLASS
CERTIFICATION ORDER**

27 GOOGLE LLC,
Defendant.

28 Judge: Hon. Susan van Keulen, USMJ

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”)
 3 respectfully seeks to seal certain portions of the parties’ Joint Submission Re: Preservation in Light
 4 of Class Certification Order (“Joint Submission”), which contains non-public, highly sensitive and
 5 confidential business information that could affect Google’s competitive standing and may expose
 6 Google to increased security risks if publicly disclosed, including details related to Google’s internal
 7 systems and processes, data fields, and metrics, which Google maintains as confidential in the
 8 ordinary course of its business and is not generally known to the public or Google’s competitors.
 9 This information is highly confidential and should be protected.

10 This Administrative Motion pertains to the following information contained in the Joint
 11 Submission:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Joint Submission Re: Preservation in Light of Class Certification Order	Portions Highlighted in Blue at: Pages 3:26-27, 4:1, 4:3-5, 5:24, 6:2-3, 7:11	Google

16 **II. LEGAL STANDARD**

17 A party seeking to seal material must “establish[] that the document, or portions thereof, are
 18 privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is
 19 “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing
 20 only of sealable material.” *Id.*

21 In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a
 22 showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty.*
Of Honolulu, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information
 23 in a non-dispositive motion, such as the underlying motion, must show only “good cause.” *Id.* at
 24 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the
 25 public has less of a need for access to court records attached only to non-dispositive motions because
 26 these documents are often unrelated, or only tangentially related, to the underlying cause of action”
 27

1 and that as a result “[t]he public policies that support the right of access to dispositive motions, and
 2 related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d
 3 at 1179; *see also TVIIM, LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015)
 4 (“Records attached to nondispositive motions are not subject to the strong presumption of access.”)
 5 (citation omitted). Under the “good cause” standard, courts will seal statements reporting on a
 6 company’s users, sales, investments, or other information that is ordinarily kept secret for
 7 competitive purposes. *See Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar.
 8 24, 2014); *Nitride Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug.
 9 1, 2018) (granting motion to seal “[c]onfidential and proprietary information regarding
 10 [Defendant]’s products” under “good cause” standard) (Van Keulen, J.). Although the materials that
 11 Google seeks to seal here easily meet the higher “compelling reasons” standard, the Court need only
 12 consider whether these materials meet the lower “good cause” standard because the underlying
 13 motion is not dispositive.

14 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

15 Courts have repeatedly found it appropriate to seal documents that contain “business
 16 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*,
 17 435 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 18 “contain[] confidential information about the operation of [the party’s] products and that public
 19 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of
 20 Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 21 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 22 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at
 23 *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 24 standard where that information could be used to the company’s competitive disadvantage”) (citation
 25 omitted). Courts in this district have also determined that motions to seal may be granted
 26 as to potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015
 27 WL 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party]
 28 ha[s] not shown that the substance of the information . . . amounts to a trade secret”).

1 Here, the Joint Submission comprises confidential and proprietary information regarding
 2 highly sensitive features of Google’s internal systems and operations that Google does not share
 3 publicly. Specifically, this information provides details related to Google’s internal data storage,
 4 metrics, and fields. Such information reveals Google’s internal strategies, system designs, and
 5 business practices for operating and maintaining many of its important services while complying
 6 with its legal and privacy obligations.

7 Public disclosure of the above-listed information would harm Google’s competitive standing
 8 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 9 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
 10 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
 11 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
 12 sensitive business information related to Google’s processes and policies to ensure the integrity and
 13 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
 14 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
 15 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
 16 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
 17 motion to seal as to “internal research results that disclose statistical coding that is not publicly
 18 available”).

19 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 20 compromise Google’s infrastructure. Google would be placed at an increased risk of cyber security
 21 threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25,
 22 2013) (sealing “material concern[ing] how users’ interactions with the Gmail system affects how
 23 messages are transmitted” because if made public, it “could lead to a breach in the security of the
 24 Gmail system”). The security threat is an additional reason for this Court to seal the identified
 25 information.

26 The information Google seeks to redact, including details related Google’s internal projects,
 27 internal databases, and their proprietary functionalities, is the minimal amount of information
 28 needed to protect its internal systems and operations from being exposed to not only its competitors

1 but also to nefarious actors who may improperly seek access to and disrupt these systems and
2 operations. The “good cause” rather than the “compelling reasons” standard should apply but under
3 either standard, Google’s sealing request is warranted.

4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court should seal the identified portions of the Joint
6 Submission.

7
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